IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

Crl.MC.No. 3953 of 2005()

CC.283/2005 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD

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PETITIONER:

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1. A.K.NARAYANAN, DIRECTOR,
   M/S.DINESH FOODS, DINESH BHAVAN,
   PAYYAMBALAM, KANNUR-1.

2. K.P.RAVI, DO. DO.

3. VAYAKKADI BALAKRISHNAN, DO. DO.

4. ANCHANDI KRISHNAN, DO. DO.

5. PULIKKAL BALAN, DO. DO.

6. M.P.BALAN, RTD. GENERAL MANAGER,
   DISTRICT INDUSTRIES CENTRE, KANNUR,
   DIRECTOR DINESH FOODS, KANNUR-1.

BY ADV. SRI.N.A.MURALEEDHARAN

RESPONDENTS: COMPLAINANT & STATE

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1. FOOD INSPECTOR, KASARAGOD CIRCLE.

2. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI PUZHAKKARA MUHAMMED.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL M.C. NO. 3953 of 2005

Dated 7th day of December, 2006

ORDER

The Petitioners who are accused Nos. 4 to 9 in C.C.No.283/2005 in the court of the Chief Judicial Magistrate Kalpetta with respect to the offences under sections 16(1-A)(i) read with section 2(ia)(a)(i) and section 7(i) of the Prevention of Food Adulteration Act and Rules, have sought for setting aside the proceedings specifically alleging violation of section 17(4) of the P.F.A Act and also on the ground that the petitioners were disabled to resort to section 13(2) as the complaint has been filed subsequent to the expiry of the period "best before use".

2. The allegation is that on 22-9-2003 the Food Inspector inspected the particular shop and sample of red chilly powder was taken and the same on getting analysed was found to be not in terms of the standard specified , i.e. Appendix B-A 05 - 05-01 of chilly powder. The specific allegation is that the petitioners are the members of the Board of Directors of Dinesh Foods, Kannur. But there is no averments in terms of section 17 (4) that they are responsible for the conduct of the business

conducted by the establishment or that the offence was committed with their consent or connivance nor the offence is attributed to any negligence on the part of the petitioners. The counsel has relied on the decisions of the Supreme Court in **Delhi Municipality v. Ram Kishan**(A.I.R. 1983 S.C 67) and **Nalin Thakur and others v.State of Maharashtra** (2004(1) FAC 68). I find that on a perusal of the complaint produced i.e annexure-I, there is no recital in compliance to section 17(4). Hence, the complaint cannot be sustained against the petitioners who are accused nos. 2 to 8.

3. It is also contended that the petitioners could not avail of the option provided in section 13 (2) to have the sample examined by Central Food Laboratory. As per section 13(3), and section 13(5), the findings of the Central food Laboratory shall be final and conclusive evidence and the same shall supersede the report of the Public Analyst. In the instant case, the sample was collected on 22-9-2003. The manufacturing date is August 2003 as can be seen from annexure-III report of the Public Analyst. It can also be seen from annexure III that the period mentioned as "best before use" is within six months

from the date of packing. The complaint has been filed only on 11-4-2005. Evidently subsequent sending of the sample to the Central Food Laboratory would not be helpful. The above point has been considered by the Supreme Court in **State of Haryana v. Unique Farmaid P.Ltd.** (1999(2) FAC 399) and in **Guptha Chemicals Pvt.Ltd.v. State of Rajasthan** (2002 (2) FAC 148) wherein the Supreme Court has held that continuing prosecution in such cases will be a futile exercise and abuse of process of court. In the instant case, the ratio of the above decisions is squarely applicable and hence, the prosecution against the petitioners cannot be sustained. In the result, the entire proceedings in C.C.189/2005 in the court of CJM Kalpetta is herewith quashed.

The Crl.M.C. is disposed of as above.

K.R.UDAYABHANU,JUDGE.

kvm/-